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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. DANIEL HILL, Defendant and Appellant.	A153014 (San Francisco County Super. Ct. No. SCN223742)

Daniel Hill appeals following his murder conviction, arguing the trial court erred in admitting evidence of an uncharged crime, one of appellant's two confessions, and testimony relating facts in autopsy reports prepared by nontestifying pathologists. We affirm.

PROCEDURAL BACKGROUND

A 2015 indictment charged appellant with the murder of Michael Ponder (Pen. Code, § 187, subd. (a)), and alleged the personal use of a deadly weapon, a knife (*id.*, § 12022, subd. (b)(1)).[1] In July 2016, appellant was declared not competent to stand trial; in May 2017, he was found competent. In October 2017, a jury found appellant guilty of first degree murder and found the personal use allegation true. The trial court sentenced appellant to an aggregate prison term of 26 years to life.

[1] Additional charges were later severed and then dismissed on the prosecutor's motion.

FACTUAL BACKGROUND

Ponder's Death and Investigation

On the morning of August 28, 2010, a San Francisco police officer discovered the body of a man, later identified as Michael Ponder, near Kezar Stadium and Park Police Station in Golden Gate Park. Ponder was lying on his side, on top of a sleeping bag, and had 12 stab wounds to the left side of his face and neck. He had no defensive wounds, suggesting he was killed while asleep or otherwise incapacitated. There was a large amount of blood on and under his head, and a trail of blood drops led away from the scene. His body temperature was consistent with a time of death between 11:00 p.m. on August 27 and 3:00 a.m. on August 28, 2010.

Police were unable to identify any suspects from DNA samples, fingerprints, or canvassing the area. The murder weapon was never found. After a nine-month investigation, the case became inactive.

The Uncharged Reno Homicide

The following evidence about an uncharged homicide in Reno, Nevada, was admitted under Evidence Code section 1101, subdivision (b),[2] to prove identity, intent, and common plan.

Around 11 p.m. on February 27, 2013, Lori Hart was repeatedly stabbed and killed as she walked down a street in Reno, Nevada. An outdoor surveillance camera showed a man following Hart, then running toward her and stabbing her several times. Hart walked a short distance and collapsed, and the man ran away. She was unconscious when law enforcement arrived and died soon thereafter.

A driver who passed by just before the attack described the man following Hart as having a full beard and possibly wearing a hooded sweatshirt. In the early morning hours of March 1, 2013, law enforcement found appellant inside an abandoned building very near the crime scene. Appellant matched the physical description provided by the witness and had an inch-long laceration on the palm of his right hand. Near the site of

[2] All undesignated section references are to the Evidence Code.

the stabbing, law enforcement found a serrated knife blade coated with apparent dried blood, and two black plastic pieces that appeared to be the blade's handle. Hart's DNA was found on the blade and one of the handle pieces. Both Hart's DNA and appellant's DNA were found on the second handle piece. During a March 1 interview with Reno police, appellant said he had stabbed Hart, a "completely innocent" stranger, because of the stress he lived with on a daily basis.[3]

The parties stipulated that appellant had been charged in Nevada with Hart's homicide and that the charges were unresolved and pending at the time of the San Francisco trial.

Appellant's Confessions to Ponder's Murder

On March 1, 2013, after appellant told Reno police he killed Hart, the officers asked if he had done "something like this" before. Appellant told the Reno officers that in San Francisco in the summer of 2010, he "killed a guy" by stabbing him in the throat with a knife "quite a few times" as the man slept on his side. He said the killing took place in in Golden Gate Park near Kezar Stadium and a police station. Reno law enforcement contacted the San Francisco police department.

The following day, two San Francisco police officers interviewed appellant in Reno.[4] Appellant told the officers he was in San Francisco in late 2009 and 2010, homeless and living in Golden Gate Park. He was casually acquainted with Ponder, who was also homeless and staying in Golden Gate Park.[5] Appellant said he killed Ponder behind a police station near Kezar Stadium in the summer or fall of 2010, between 11

[3] Excerpts of the interview were played for the jury and a transcript was provided.

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[5] Appellant could not remember the victim's name, but when the detectives asked if Michael sounded familiar, appellant said, "Yes." Appellant also identified a photograph of Ponder as the victim. Both appellant and Ponder received numerous "quality of life" citations near Kezar Stadium in 2009 and 2010.

p.m. and 3 a.m. Appellant found Ponder sleeping and, after thinking about stabbing him for about 20 minutes, held his head and repeatedly stabbed him in the throat with a knife.[6]

One of the interviewing officers testified the information appellant provided about Ponder's killing was "specific" and "spot on." The information included multiple details that had not been disclosed to the public, including the precise location of the killing, the positioning of Ponder's body, the use of a knife, and the location of the injuries.

DISCUSSION

I. *Reno Homicide*

Appellant argues the trial court erred in admitting evidence of the 2013 Reno homicide. We disagree.

A. *Additional Background*

Before trial, the People moved to admit evidence of the Hart homicide pursuant to section 1101, subdivision (b), to prove identity, intent, and a common plan. The trial court granted the motion in a detailed written order. The court found "a high degree of common features" between the homicides of Hart and Ponder, including that "the killing was unprovoked," the assailant "stabbed the victim multiple times," the victim was attacked while "in a vulnerable position (either because the victim was asleep or by attacking the victim from the side or behind)," and "the murder weapon was a knife." The court further found the probative value was "high, given the many similarities between the two cases," and appellant would not be unduly prejudiced because "the nature of the alleged [Reno] offense is no more inflammatory or prejudicial than the San Francisco homicide."

B. *Section 1101*

"Evidence that a defendant has committed crimes other than those currently charged is not admissible to prove that the defendant is a person of bad character or has a criminal disposition; but evidence of uncharged crimes is admissible to prove, among

[6] Appellant told the detectives that a few weeks after Ponder's killing, the knife had been seized by a police officer who saw appellant trying to get rid of it. Law enforcement officers were unable to locate the knife or identify the officer who had taken it.

other things, the identity of the perpetrator of the charged crimes, the existence of a common design or plan, or the intent with which the perpetrator acted in the commission of the charged crimes. (Evid. Code, § 1101.) Evidence of uncharged crimes is admissible to prove identity, common design or plan, or intent only if the charged and uncharged crimes are sufficiently similar to support a rational inference of identity, common design or plan, or intent." (*People v. Carter* (2005) 36 Cal.4th 1114, 1147 (*Carter*).) " 'To be relevant on the issue of identity, the uncharged crimes must be highly similar to the charged offenses. [Citation.] Evidence of an uncharged crime is relevant to prove identity only if the charged and uncharged offenses display a " 'pattern and characteristics . . . so unusual and distinctive as to be like a signature.' " ' " (*Id.* at p. 1148.) " 'A lesser degree of similarity is required to establish relevance on the issue of common design or plan. [Citation.] For this purpose, "the common features must indicate the existence of a plan rather than a series of similar spontaneous acts, but the plan thus revealed need not be distinctive or unusual." ' " (*Id.* at p. 1149.) " 'The least degree of similarity is required to establish relevance on the issue of intent. [Citation.] For this purpose, the uncharged crimes need only be "sufficiently similar [to the charged offenses] to support the inference that the defendant ' "probably harbor[ed] the same intent in each instance." ' " ' " (*Ibid*.) We review the trial court's determination that the charged and uncharged offenses are sufficiently similar for abuse of discretion. (*Id.* at p. 1147.)

Appellant argues the only similarity between the two homicides is the murder weapon, and they were thus insufficiently similar. We disagree. The trial court did not abuse its discretion in finding the substantial similarities—most notably, both crimes were unprovoked multiple stabbings of vulnerable victims—rendered evidence of the Reno homicide admissible to prove identity, plan, and intent. That there were also differences between the two crimes, as appellant notes, does not render the uncharged crime inadmissible. (See *Carter, supra*, 36 Cal.4th at p. 1148 ["To be highly distinctive, the charged and uncharged crimes need not be mirror images of each other."].) Instead, such differences go "to the weight of the evidence." (*Ibid.*)

Appellant's reliance on *People v. Williams* (2018) 23 Cal.App.5th 396 (*Williams*) is unavailing. In *Williams*, it was undisputed that the defendant stabbed and killed his wife when she tried to leave him, but he argued it was done in the heat of passion. (*Id.* at pp. 400–401, 406–407.) The prosecutor presented evidence that, more than 20 years before the charged crime, the defendant shot his former mother-in-law during an argument with his estranged then-wife (not the victim), and argued this uncharged crime proved the charged crime was premeditated and deliberate. (*Id.* at pp. 401, 407.) The Court of Appeal held admission of the uncharged crime evidence was an abuse of discretion: "Apart from the fact that a troubled marriage was involved in both cases, they are completely different kinds of incidents." (*Id.* at p. 420.) Notably, in the uncharged crime, "defendant suddenly shot his former mother-in-law when she intervened on behalf of her daughter. The People's theory in the [charged] incident was that defendant lured the victim into the van in order to kill her, or at least formed the deliberate and premeditated intent to kill her while conversing inside the van." (*Id.* at p. 420.) Moreover, the defendant's "motive for the [uncharged] 1991 shooting was generated by his desire to prevent a third party from interfering with his marriage; here, killing the victim ended his marriage rather than preserving it." (*Id.* at p. 421.) The court also noted the uncharged crime took place "a *very* long time" before the charged crime. (*Id.* at p. 422.) In contrast to *Williams*, the charged and uncharged crimes here had significant similarities, noted above, and took place less than three years apart.

C. *Section 352*

Appellant contends, even if the challenged evidence was admissible under section 1101, subdivision (b), the trial court abused its discretion by failing to exclude it under section 352. " 'There is an additional requirement for the admissibility of evidence of uncharged crimes: The probative value of the uncharged offense evidence must be substantial and must not be largely outweighed by the probability that its admission would create a serious danger of undue prejudice, of confusing the issues, or of misleading the jury. [Citation.] On appeal, a trial court's resolution of these issues is reviewed for abuse of discretion." (*Carter, supra*, 36 Cal.4th at p. 1149.)

The probative value was significant in light of the substantial similarities discussed above. Moreover, the Reno homicide was "not significantly more inflammatory than the charged offense[]" and the jury was properly instructed "as to the limited purposes for which it might consider the evidence." (*Carter, supra,* 36 Cal.4th at pp. 1150–1151.) The trial court "did not exceed the bounds of reason" in finding the probative value evidence of the Reno homicide was not outweighed by the probability of prejudice. (*Id.* at p. 1152.)

II. *Confession to Reno Police*

Appellant contends the trial court erred in finding his statements to Reno police were made voluntarily. Appellant does not challenge the admission of his statements to San Francisco police. We find any error in the admission of his statements to Reno police harmless beyond a reasonable doubt.

First, contrary to appellant's contention, the other evidence linking him to the Reno homicide was overwhelming. His DNA was on a bloody knife found near the crime scene that also contained the victim's DNA. Appellant was found in an abandoned house near the crime scene and his physical description matched that provided by a witness. Moreover, on March 2, 2013, appellant told *San Francisco* officers, "I commit a murder couple nights ago under the kind of like exact same premises . . . . I killed that chick . . . ." Thus, even without appellant's statements to Reno police, the jury would have heard what is readily understood as a confession to the Hart homicide.

Second, appellant's statements to San Francisco police contained a detailed confession to the charged crime. Appellant argues the jury might have disbelieved this confession absent his additional confession to the Ponder murder, made to Reno police. We disagree. Appellant's confession to San Francisco police was highly specific and included multiple details unknown to the general public.

In sum, any error in the admission of appellant's statements to Reno police was harmless beyond a reasonable doubt.

III. *Pathologists' Testimony*

Appellant argues testimony relating facts contained in the autopsy reports of Hart and Ponder violated state hearsay rules and his constitutional confrontation clause rights because the pathologists who conducted the autopsies did not testify. We reject the challenge.

A. *Additional Background*

At the time of trial, the prosecutor represented that the pathologists who performed the autopsies of Ponder and Hart were no longer working for their respective agencies, but the prosecutor did not establish they were unavailable to testify. Over defense counsel's hearsay and confrontation clause objections, the trial court ruled other pathologists could testify about the portions of the autopsy reports describing the states of the victims' bodies and give their own opinions based on that information and autopsy photographs. At trial, other pathologists so testified with respect to the Ponder and Hart autopsies.

B. *Analysis*

As appellant acknowledges, the California Supreme Court has held that "objective facts about the condition of [a] victim['s] . . . body" contained in an autopsy report are "not so formal and solemn as to be considered testimonial for purposes of the Sixth Amendment's confrontation right." (*People v. Dungo* (2012) 55 Cal.4th 608, 621.) We are bound by that holding (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455), which defeats appellant's confrontation clause challenge.

Even if *Dungo's* conclusion that autopsy reports are nontestimonial is ultimately changed and the challenged testimony was a violation of the confrontation clause, any constitutional error was harmless beyond a reasonable doubt. Appellant identifies the following testimony as inadmissible and prejudicial: "the depth of the stab wounds, the severity of the hemorrhaging, and the amount of blood, [and] the temperature of the body at the crime scene." Appellant asserts—without citation to the record (for example, the prosecutor's closing statement)—this evidence was used to corroborate appellant's statements about "the manner of killing." As to the first three types of testimony,

appellant fails to explain how they corroborated his statements and we see no basis to so conclude. Appellant testified he stabbed Ponder multiple times in his throat as he slept; other evidence corroborated this statement and testimony about the depth of the wounds or amount of bleeding does not provide additional corroboration. As for the fourth type of testimony, the pathologist testifying about Ponder's autopsy testified that a time of death between 11 p.m. and 3 a.m.—the time estimated by appellant in his statement to San Francisco police—was consistent with Ponder's body temperature at the crime scene. In light of the substantial other evidence corroborating appellant's statements, any error in admitting this testimony was harmless beyond a reasonable doubt.

With respect to appellant's hearsay challenge, we need not decide whether a hearsay exception applied to the challenged testimony. Any hearsay error was harmless for the reasons stated above.[7]

DISPOSITION

The judgment is affirmed.

[7] Appellant argues cumulative error prejudiced his constitutional right to a fair trial. We have assumed two errors—the admission of appellant's statements to Reno police and the testimony relating facts contained in the autopsy reports of Hart and Ponder—and found both harmless. Considering them together, the assumed errors did not prejudice appellant's right to a fair trial.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BURNS, J.

(A153014)